IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1090 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SULEMAN ALI HAJI DODRA VORA PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRABEN PATEL FOR MR KM SHETH for Petitioner

MR RC KODEKAR, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/05/2001

ORAL JUDGEMENT

1. Heard learned advocate Ms.Subhadhraben Patel for Mr.K.M. Sheth on behalf of the petitioner and learned AGP Mr.R.C.Kodekar on behalf of the respondent - State.

2. In the present petition, the order of detention dated 23rd October, 2000 passed by District Magistrate, at Bharuch has been challenged by the petitioner under Article 226 of the Constitution of India. Learned advocate Ms.Subhadhraben Patel for the petitioner has challenged the detention order on various grounds, but she has relied upon the first contention as has been

raised in para-(7) to the effect that the last incident has occurred on 22nd August, 2000 while the order of detention is passed on 23rd October, 2000. Therefore, there is a delay about two months and one day in passing the detention order. The second contention which has been raised by learned advocate Ms.Subhadhraben Patel is that the concerned Police Authority at Jambusar has examined the confidential witnesses on 20th September, 2000 and the said statements have been verified and examined by the detaining authority on 19th October, 2000. She has submitted that apparently looking to the documents itself, the said statements, in fact not were examined by the detaining authority after calling upon the witnesses in his presence but merely an endorsement has been made in verification of the statements which has been recorded by concerned Police Authority, at Jambusar. Therefore, the detaining authority has not applied his mind and the subjective satisfaction is not justified from looking to the documents itself. The following notes have been made on the statement recorded on 20th September, 2000 which are as under :-

"Examined the witness and his statement seems to be valid and his name may be kept secret."

This is merely an endorsement of the statement which was recorded by the concerned Police Authority. On the basis of such endorsement, the detaining authority has claimed privilege under Section 9(2) of the PASA Act. In light of this endorsement of detaining authority, the learned advocate Ms.Subhadhraben Patel for the petitioner has submitted that the detaining authority has not examined the witnesses, no separate statement has been recorded and it amounts to endorsement of the statements which were recorded by the concerned Police Authority. Therefore, she has relied upon the decision of this Court in the case of Jakirbhai Rahimbhai Nagori v/s. District Magistrate, Mehsana & Others, reported in 1996 (1) G.L.H. 300.

3. Learned AGP Mr.R.C.Kodekar on behalf of the respondent - State has relied upon the affidavit-in-reply filed by the concerned detaining authority. But Mr.Kodekar is not able to satisfy with this Court that the endorsement which has been made on the statement of the witnesses whose names have been kept secret, whether in fact the detaining authority has examined the said witnesses or not. Looking to the record itself, Mr.Kodekar also fairly agrees that in reality no examination of the witnesses have been done by the concerned detaining authority. Even in reply, there is

no explanation about such endorsement which was made by the detaining authority. Mr.Kodekar has also submitted in respect to the first contention that there is a specific reply given by the detaining authority in para-(8) to the effect that the last offence registered against the petitioner was on 22nd August, 2000 and the statement of two witnesses were recorded whose names were assured to be kept confidential on 17th September, 2000 and the same were verified by the Dy.S.P., Jambusar on 20th September, 2000, and thereafter, the order of detention came to be passed on 23rd October, 2000. Thus, according to the learned AGP Mr.Kodekar there is no delay on part of the respondent authority in passing the order of detention.

4. I have heard learned advocates of respective parties. Considering the first contention that the last offence registered against the present petitioner is on 22nd August, 2000 and, thereafter, on 17th September, 2000, the Police Sub-Inspector, Vagra has recorded the statement which has been verified by Dy.S.P., Jambusar on 20th September, 2000 and endorsed by the detaining authority on 19th October, 2000 and, thereafter, on 23rd October, 2000, the order of detention has been passed. Therefore, there is a delay which has not been explained properly in the reply filed by the detaining authority that from the offence dated 22nd August, 2000 for more than two months have taken by the concerned detaining authority for passing the detention order. The second contention is that the statement which has been recorded by the Police Inspector, Vagra was verified by the Dy.S.P., Jambusar on 20th September, 2000 and the detaining authority has examined the witnesses as endorsed by the detaining authority on 19th October, 2000 on the statement without calling upon the concerned witnesses in his presence and without considering the genuineness of the witnesses, has merely written in the left column of the statement, 'verified by the Dy.S.P., Jambusar.' The detaining authority has endorsed on 19th October, 2000 which is apparently an example non-application of mind and the subjective satisfaction is not justified. It is the duty of the detaining authority to be subjectively satisfied that the claim of privilege which was seeking to make was justified. Unfortunately, the detaining authority below every statement, one note has been mentioned that examined the witness and his statement seems to be valid and the name may be kept secret. Such endorsement is not sufficient to be justified subjective satisfaction of detaining authority as per the view taken by the Division Bench of this Court in the case of Koli Ashwin v. State of

Gujarat in Special Criminal Application No.1812 of 1993 dated 12th September, 1994. The following observation has been made by the Division Bench of this Court which are as under :-

> "However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy.S.P. who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material.
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> About what has been verified, what were the instructions and to what extent the verifying authority himself was satisfied about the apprehension expressed, there is nothing either in the grounds of detention along with its compilation or in the contemporaneous record from the office of the detaining authority."

5. After considering the decision of the Division Bench as well as the decision of the learned single Judge of this Court reported in 1996 (1) G.L.H. 300, according to my opinion, the order of detention dated 23rd October, 2000 is required to be quashed and set aside.

6. For the reasons recorded in the oral judgment, the petition succeeds and the same is allowed. The order of detention dated 23rd October, 2000 is vitiated and result into quash and set aside the same. The detenu Suleman Ali Haji Dodra Vora Patel who has been detained at present in District Jail, Nadiad be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

(H. K. Rathod, J.)

(vrpanchal)*